THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.10132 OF 2006

14.09.2006

Between:

Signals & Systems India Pvt. Ltd., represented by its Director Sri V.Kesava Murthy

… Petitioner

AND

Chairman and Managing Director, APCPDCL, Hyderabad And others

… Respondents

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WRIT PETITION No.10132 OF 2006

ORDER:

The petitioner is an incorporated company. When the first respondent invited tenders for supply of 300 Nos. of Common Meter Reading Instruments (CMRIs) vide their tender notification No.39/2006, the petitioner submitted tender allegedly quoting Rs.29,952/- (Rupees Twenty nine thousand nine hundred and fifty two only) for each CMRI whereas the fourth respondent herein allegedly quoted Rs.31,838/- (Rupees Thirty one thousand eight hundred and thirty eight) for each CMRI. The petitioner alleges that ignoring the petitioner's tender, respondents 1 to 3 awarded the contract to fourth respondent though the petitioner was promised that the matter will be negotiated. The petitioner, therefore, seeks a declaration that awarding of contract to fourth respondent is arbitrary and illegal, and also seeks a consequential direction to respondents to issue fresh tender notice.

It is now well settled that the question of arbitrariness in awarding of contract can be raised only at the pre-award stage of contract. At the moment the contract is awarded, such argument is not available to an aggrieved person. He has to seek appropriate remedy in Civil Court.

In **Radhakrishna Agarwal v State of Bihar**[1] the Supreme Court held that power to enter into contract is not always regulated by the Constitution. The relationship of persons to the contract is regulated by the contract. The State as well as other persons to the contract is bound by the obligations in the contract. Though the relationship between the persons to the contract is not the relationship of master and servant, after entering into contract, the relations are no longer governed by the constitutional provisions, but by the legally valid contract. The remedy under Article 226 of the Constitution of India is not a proper remedy for redressing the grievance of the parties to the contract. The following observations of the Apex Court in **Radhakrishna Agarwal** (supra), further lay down as under.

… … Even if the appellants could be said to have raised

> any aspect of Article 14 of the Constitution and this Article could at all be held to operate within the contractual field whenever the State enters into such contracts, which we gravely doubt, such questions of fact do not appear to have been urged before the High Court. And in any event, they are of such a nature that they cannot be satisfactorily decided without a detailed abduction of evidence, which is only possible in ordinary civil suits, to establish that the State, acting in its executive capacity through its officers, has discriminated between parties identically situated. On the allegations and affidavit evidence before us we cannot reach such a conclusion. Moreover, as we have already indicated earlier, the correct view is that it is the contract and not the executive power, regulated by the Constitution, which governs the relations of the parties on facts apparent in the cases before us.

In view of the settled position, a writ petition is not maintainable and it is accordingly dismissed. No costs.

September 14, 2006

(**V.V.S.RAO, J**)

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[1] AIR 1977 SC 1496